

1 THE HONORABLE ROBERT S. LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

8 TOMMY BROWN, individually and on behalf
9 of all other persons similarly situated;

10 Plaintiffs,

11 vs.

12 TRANSWORLD SYSTEMS, INC., et al.,

13 Defendants.
14

CASE NO. 2:20-cv-00680-RSL

**PLAINTIFF'S SUPPLEMENT TO
REPLY TO DEFENDANT TRUSTS'
OPPOSITION TO MOTION TO
PROVIDE AUTHORITY (ECF 70).**

NOTE FOR MOTION CALENDAR:

October 16, 2020

15 Plaintiff moved to require counsel of record for the Trusts in this action to provide
16 authority for them to represent the Trusts in this litigation. After Plaintiff filed his
17 reply, Judge Zilly issued a minute order in *Hoffman, et al. v. Transworld Systems,
18 Inc., et al.*, Case No. 2:18-cv-01132-TSZ (ECF 99), attached hereto as Ex. A, that
19 ordered the counsel of record for the Defendant Trusts before that Court to provide
20 evidence showing their authority to represent the Trusts. While this decision is not
21 controlling, the Court may find it persuasive on the same issue before this Court on
22 Plaintiff's Motion to Provide Authority.
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24 Dated this 2nd of November 2020.
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PLAINTIFF'S SUPPLEMENT TO REPLY TO DEFENDANT TRUSTS'
OPPOSITION TO MOTION TO PROVIDE AUTHORITY (ECF 70) - 1

HENRY & DEGRAAFF, P.S.

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EXHIBIT A

PLAINTIFF'S SUPPLEMENT TO REPLY TO DEFENDANT TRUSTS'
OPPOSITION TO MOTION TO PROVIDE AUTHORITY (ECF 70) - 3

HENRY & DEGRAAFF, P.S.

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V (206) 330-0595 / F (206) 400-7609

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTHER HOFFMAN, SARAH DOUGLASS, ANTHONY KIM, IL KIM, and DARIA KIM,

Plaintiffs.

V.

TRANSWORLD SYSTEMS INC.,
PATENAude & FELIX APC,
MATTHEW CHEUNG, JANE DOE
CHEUNG, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2003-1, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2004-1, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2004-2, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2005-1, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2005-2, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2005-3, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2006-1, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2006-2, NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2006-3, NATIONAL

C18-1132 TSZ

MINUTE ORDER

1 COLLEGIATE STUDENT LOAN
 2 TRUST 2006-4, NATIONAL
 3 COLLEGIATE STUDENT LOAN
 4 TRUST 2007-1, NATIONAL
 5 COLLEGIATE STUDENT LOAN
 6 TRUST 2007-2, NATIONAL
 7 COLLEGIATE STUDENT LOAN
 8 TRUST 2007-3, NATIONAL
 9 COLLEGIATE STUDENT LOAN
 10 TRUST 2007-4, NATIONAL
 11 COLLEGIATE MASTER STUDENT
 12 LOAN TRUST, and DOES 1–10,

13 Defendants.

14 The following Minute Order is made by direction of the Court, the Honorable
 15 Thomas S. Zilly, United States District Judge:

16 (1) Defendants' Motion to Strike Portions of Plaintiffs' Second Amended
 17 Complaint ("SAC"), docket no. 76, is DENIED. Plaintiffs' allegations, contained in
 18 ¶¶ 136–146 of the SAC and in Exhibit C attached thereto, accurately state that a proposed
 19 consent decree between the National Collegiate Student Loan Trust ("NCSLT")
 20 Defendants and the Consumer Financial Protection Bureau has not yet been entered.
 21 SAC at ¶ 146 (docket no. 61). While Plaintiffs' allegations omit certain details of that
 22 proceeding, they are not "redundant, immaterial, impertinent, or scandalous" as
 23 contemplated under Federal Rule of Civil Procedure 12(f). *See Petrie v. Elec. Game
 Card, Inc.*, 761 F.3d 959, 965–67 (9th Cir. 2014). The Court may also take judicial
 notice of proceedings that have a direct relation to matters at issue in this case. *See
 United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244,
 248 (9th Cir. 1992).

25 (2) Plaintiffs' Amended Motion for Order Requiring NCSLT Defendants'
 26 Attorneys to Show Authority to Represent NCSLT Defendants, docket no. 82, is
 27 GRANTED. The special servicing agreement, which was signed by the owner trustee of
 28 the NCSLT Defendants, the Wilmington Trust Company, grants the special servicers
 29 authority to "[r]etain counsel on behalf of the [NCSLT Defendants] (whether directly or
 30 through collection agencies) to further pursue enforcement and collection of" delinquent
 31 loans. March 1, 2009 Special Servicing Agreement, Ex. A to Defendants' Response at
 32 ¶ 3 & Ex. A (docket no. 88-1 at 3, 11) (emphasis added). The agreement does not,
 33 however, expressly allow the special servicers to delegate authority to retain counsel on
 34 behalf of the NCSLT Defendants to *defend against the alleged unfair loan collection
 35 practices* at issue here. *Id.* at 9–11. Nor do Defendants point to any other evidence
 36 showing that the Wilmington Trust Company granted the special servicers such authority.

1 *See generally* Defendants' Response (docket no. 88). Regardless of whether RCW
2 2.44.030 applies, this Court may regulate the conduct of attorneys appearing before it.
3 *See Paul E. Iacono Structural Eng'r Inc. v. Humphrey*, 722 F.2d 435, 439 (9th Cir.
4 1983). Defendants' attorneys are DIRECTED to produce evidence showing their
5 authority to represent the NCSLT Defendants in this action on or before the deadline to
6 file a responsive pleading or motion to the SAC, *see* Minute Order (docket no. 91), or by
7 Monday, November 16, 2020, whichever occurs earlier.

8 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
9 record.

10 Dated this 2nd day of November, 2020.

11 William M. McCool

12 Clerk

13 s/Gail Glass

14 Deputy Clerk